203-667-6515

TOWN OF ORANGE
NOTICE OF PUBLIC HEARING ON PROPOSED ORDINANCE

Notice is hereby given to the legal voters and those persons qualified to vote in Town Meetings of the Town of Orange, that in accordance with Section 3.4 of the Charter of the Town of Orange, the Board of Selectmen will hold a Public Hearing on Wednesday, May 13, 1998 at 7:30 p.m. in the lower level meeting room of the Town Hall, 617 Orange Center Road, Orange, CT on the proposed ordinance set forth below.

ORDINANCE REGULATING THE ADVERTISING OF TOBACCO RELATED PRODUCTS AND PROHIBITING CIGARETTE VENDING MACHINES IN THE TOWN OF ORANGE

WHEREAS: Sections 53-344 and 53-244a of the Connecticut General Statutes make it unlawful for any person engaged in the manufacture or sale of cigarettes to sell, barter, or give cigarettes to any individual under the age of 18 years; and

WHEREAS: Cigarettes are the most heavily advertised product in the United States and the tobacco industry spends more than $421 million annually for outdoor advertising of cigarettes; and

WHEREAS: More than 3 million young people under the age of 18 consume more than 947 million packs of cigarettes annually in the United States, yielding gross sales to the tobacco industry each year of approximately $1 billion; and

WHEREAS: Recent governmental survey have found a 50% increase in the percentage of adolescents who smoke cigarettes; and

WHEREAS: The United States Supreme Court has repeatedly recognized that children deserve special solicitude because they lack the ability to assess and fully analyze the information presented to them through the commercial media; and

WHEREAS: Outdoor advertisements are a unique and distinguishable medium of advertising which subjects the general public to involuntary and unavoidable forms of solicitation, as the supreme Court recognized in Packer Corporation v. Utah, 285 U.S. 105 (1932) by citing with approval the following excerpt fro the opinion of the Utah supreme Court: "*Advertisements of this sort are constantly before the eyes of observers on the streets...to be seen without the exercise of choice or volition o their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer. The young people as well as adults have the message of the billboard thrust upon them by all the arts and devices that skill can produce. In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard...These distinctions clearly place this kind of advertisement in a position to be classified so that regulations or prohibitions may be imposed upon all within the class. This is impossible with respect to newspapers and magazines*", and

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WHEREAS: The United States Supreme Court and other courts have recognized the positive relationship between advertising and consumption as regards a variety of goods and services, such as gambling, cigarettes (Capital Broadcasting Company v. Mitchell, 33 F.Supp. 582(DDC, 1971) and alcohol (Dunagin v City of Oxford, 718 F 2nd 738, 747-51 (1983); and

WHEREAS: In addition to judicial recognition of the general link between advertising and consumption, there is specific and convincing evidence that tobacco advertising plays a significant role in stimulating illegal consumption of cigarettes by minors, including:

- The Surgeon General has concluded that tobacco advertising and promotion do appear to stimulate cigarette consumption ("Reducing the Health Consequences of Smoking: 25 Years of Progress, A Report of the Surgeon General.") Department of Health and Human Services, 1989.

- About 85% of adolescent smokers prefer the three most heavily advertised cigarette brands. "Comparison of Cigarette Brand Preference of Adult and Teenage Smokers", Morbidity and Mortality Weekly Report, Centers for Disease Control, 1992.

- After Joe Camel campaign was introduced, Camel's market share among underage smokers jumped from 0.5% to 32.8% in three years. "RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes t Children.", Journal of the American Medical Association, December 11, 1991.

- Tobacco advertising emphasizes themes (sexual attraction, social acceptance, thinness, and independence) which appeal to youth. "Current trends in Cigarette Advertising and Marketing," New England Journal of Medicine, December 11, 1991.

- Six-year olds are familiar enough with cigarette advertising that they match the "Old Joe Camel" character with cigarettes as often as they pair Mickey Mouse with the Disney " Channel. "Brand Logo Recognition by Children Aged 3 to 6 Years", Journal of the American Medical Association, December 11, 1991.

- When asked what cigarette brand was most frequently advertised, only 13.7% of adults named Camel, compared to 28.5% of adolescents (12 to 17 years old). Recognition of the Joe Camel campaign was highest among 12 and 13 year old. "Does tobacco Advertising Target Young People to Start Smoking?", Journal of the American Medical Association, December 11, 1991.

- Cigarette advertising expenditures for promotional items such as hats, T-shirts and toy chains quadruped, from $184 million to $576 million, between 1991 and 1993. These items bear no health warnings and are easily obtained by children. Federal Trade Commission, "1995 Federal Trade Commission Report to Congress for 1993", 1995.

- Thirty percent of children (12 to 17 years old), both smokers and nonsmokers, own at least one tobacco promotional item. "Teenage Attitudes and Behaviors Concerning Tobacco" Gallop International Institute, September 1992.

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- While overall cigarette advertising in magazine has declined sharply, the number of ads per issue in magazines with substantial youth readership has remained constant. "Minority Issues", Tobacco Use: An American Crisis. Washington, DC, American Medical Association, 1993.
- According to a recent survey, adults overwhelmingly support measures which would prohibit tobacco advertising which appeals to children. Seventy-one percent favor extending regulation to nicotine products, such as patches and gum, to cigarettes; 73% believe tobacco ads without pictures and cartoons would make smoking less appealing to kids; 74% think cigarette pack coupons for promotional items which appeal to youth should be eliminated. "Youth Access to tobacco", Robert Wood Johnson Foundation, February 1995; and

WHEREAS: There has been an alarming rise between 1991 and 1996 in the Northeast of teenagers who have reported to have smoked tobacco products within the preceding month to wit: 61.3% rise in eighth graders, 37% rise among tenth graders, and 26% rise among twelfth graders. The Monitoring the Future Study, University of Michigan, 1996; and

WHEREAS: Local school officials have reported a noticeable rise in teenage smoking; and

WHEREAS: Current laws and regulations have proved ineffective and inadequate in preventing the illegal purchase of cigarettes by children under the age of 18 years, particularly from cigarette vending machines; and

WHEREAS: An ordinance restricting the placement of advertisements for cigarette and tobacco products in publicly visible locations and prohibiting the dispensing of cigarettes, tobacco and smokeless tobacco from vending machines within the Town of Orange is necessary for the promotion of the welfare and temperance of minors exposed to such advertisements; and

WHEREAS: The restrictions contained in the following ordinance will not unduly burden legitimate business activities of persons licensed by the State of Connecticut to sell cigarettes and tobacco products or persons licensed by the State of Connecticut to sell alcoholic beverages on a retail basis.

NOW, THEREFORE, BE IT ORDAINED by the Board of Selectmen of the Town of Orange to hereby adopt the following ordinance:

Section 1: Tobacco Outdoor Advertisements

a) No person may place any sign, poster, placard, device, graphic display, or any other form of advertising that advertises cigarettes, tobacco, or smokeless tobacco in publicly visible locations. "Publicly visible location: means any (i) outdoor location visible to the public including, but not limited to, outdoor billboards, roofs and sides of buildings, water towers and free-standing signboards; and (ii) doors or windows reasonably visible to the public from the outside at a distance of two feet from such doors or windows; and (iii) "Publicly visible location" does not mean or include any location intended to be visible only by those inside a premises,a private residence or a multiple dwelling unit.

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b) This section does not apply to:

1) The placement of signs, including advertisements, inside business premises that sell cigarettes, tobacco or smokeless tobacco where such signs are not visible from a public or private street;

2) The placement of signs, including advertisements, on commercial vehicles used for transporting cigarettes, tobacco, or smokeless tobacco;

3) Any sign that contains the name or slogan of the business premises referred to in subparagraph 1 of this subsection b that has been placed for the purpose of identifying such premises, provided it is not a cigarette, tobacco or smokeless tobacco product "brand name."

4) Any signs not located within 1,000 feet of any zone permitting residences under the Orange Zoning Regulation determined to be areas where children are not usually present (identify specific locations by zoning code--this is necessary for ordinance to be constitutional--if you can justify the fact that children are likely to be everywhere then you can have an overall ban-see pgs. 13 and 14 of Model Ordinance).

c) No person shall dispense or cause to be dispenses cigarettes, tobacco or smokeless tobacco products from vending machines at any location within the Town of Orange.

d) This section shall not be construed to permit any display that is otherwise restricted or prohibited by law.

Section 2: Public Service Advertising

This ordinance shall not be construed to prohibit the display of public service messages designed to communicate the hazards of cigarettes, tobacco products or smokeless tobacco or to encourage minors to refrain from consuming or purchasing tobacco products. However, this section shall not be construed to permit such a message when it is made in conjunction with the positive display of a recognized image, artwork, photograph, logo or graphic used for marketing or promotion of cigarettes, tobacco products or smokeless tobacco.

Section 3: Permits

a) No persons shall place any tobacco advertising display within the areas affected by the provisions of this ordinance without first having secured a written permit from the Sign Administrator. The Board of Selectmen designates the Zoning Enforcement Officer of the Town of Orange as its Sign Administrator.

b) Every person desiring a permit to place any advertising display shall file an application with the Board of Selectmen of the Town of Orange.

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c) The application shall be filed on a form to be furnished by the Sign Administrator or by his agent. It shall set forth the name and address of the applicant and shall contain a general description of the property upon which it is proposed to place the advertising display for which a permit is sought and a diagram indicating the location of the proposed advertising display on the property, in such a manner that the property and the location of the proposed advertising display may be readily ascertained and identified.

d) The applicant for any permit shall offer evidence that the owner or other person in control or possession of the property upon which the location is situated has consented to the placing of the advertising display.

e) An application for a permit to place a display shall contain a description of the display, including its material, size and subject and the proposed manner of placing it.

f) If the applicant for a permit is engaged in the outdoor advertising business, the application shall contain the number of the state license.

g) If the application is in full compliance with the state and local laws, the Sign Administrator or his authorized agent shall, within 10 days after compliance and upon payment by the applicant of a $500.00 fee, issue a permit to place the advertising display for the remainder of the calendar year in which the permit is issued.

h) Permits shall be renewed on the first day of January of each year upon the application and the payment of fees as provided in this chapter and shall expire on the 31st day of December of that year.

i) Each permit provided in this section shall carry an identification number and shall entitle the holder to place the advertising display described in the application.

j) Identification number plates shall be furnished by the Sign Administrator; each shall bear the identification number of the advertising display to which it is assigned.

k) No person shall place any advertising display unless there is securely fastened upon the front thereof an identification number plate of the character specified in Section 3 (j). The placing of any advertising display without having affixed thereto a valid identification number plate is prima facie evidence that the advertising display has been placed and is being maintained in violation of the provisions of this ordinance and shall be deemed a public nuisance subject to abatement in accordance with applicable law.

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Section 4: Sign Administration

a) The Board of Selectmen shall appoint a Sign Administrator who is directed to administer and enforce the terms and conditions of this chapter and all other provision s flaws relating to signs. The Sign Administrator is empowered to delegate the duties and powers granted by this section to other persons under his/her direct supervision. The Sign Administrator and such other person(s) shall constitute the Sign Administration Section of the Board of Selectmen. Until changed by vote of the Board of Selectmen, the Zoning Enforcement Officer shall serve as the Sign Administrator.

b) The duties of the Sign Administrator shall include not only the issuance of permits as required by this chapter, but also the responsibility of ensuring that all signs comply with this chapter and any other applicable law and that all signs for which a permit is required do, in fact, have a permit. The Sign Administrator shall make such inspections as may be necessary and initiate appropriate action to bring about compliance with this chapter and other applicable law if such inspection discloses any instance of noncompliance. The Sign Administrator shall investigate thoroughly any complaints of alleged violations of this chapter.

Section 5: Violations, Penalties, Civil Actions

a) Any person or business entity who violates any provision of this ordinance shall be guilty of an infraction and, upon conviction in any court of competent jurisdiction, shall be subject to administrative assessment of civil penalties.

b) Causing, permitting, aiding, abetting or concealing a violation of any provision of this ordinance shall constitute a violation of such provision.

c) Each day of violation is a separate infraction.

d) Penalties for violations shall be $100 for each offense, with an additional $100 per day for each day that the violation continues.

e) In addition to the other remedies provided in this Section, any violation of this ordinance may be enforced by a civil action brought by the Board of Selectmen. In such action, the Board of Selectmen may seek, and the Court shall grant, as appropriate, any or all of the following remedies:

1) A temporary and/or permanent injunction;

2) Assessment of the violator for costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including but not limited to reasonable costs of preparing the bringing legal action under this subsection, and attorney compensation;

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3) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;

4) A finding, after two or more violations of this ordinance involving the same outdoor sign, that the outdoor sign constitutes a public nuisance.

f) Other remedies, if any, as set forth in the Town of Orange Zoning Regulation shall also apply to this ordinance.

Section 6: Effective Date

a) The effective date of this ordinance shall be on the date of its enactment provided the provisions of this ordinance shall not, except with respect to renewals of any contract occurring after the effective date, be interpreted or applied in a manner which will impair or affect any right or obligations under any contract in existence as of the effective date of this ordinance.

Notice of Public Hearing on Proposed Ordinance dated at Orange, CT this 1st day of May, 1998.

TOWN OF ORANGE

BOARD OF SELECTMEN

BY: _____
Robert C. Sousa, First Selectman

ATTEST: _____
Patrick B. O'Sullivan,
Town Clerk

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